NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 160 of 2021

&

I.A. No. 1117 of 2021

IN THE MATTER OF:

PLBB Products Pvt. Ltd.
3rd Floor Junction Mall,
R.K.B.Path, Dibrugarh
Assam – 786 001 **...Appellant**

Vs.

1.Piyush Periwal
12/E, Judges Court Road,
Alipore, Kolkata – 700 027 **...Respondent No.1**

2. Stressed Assets Stabilization Fund (SASF)
3rd Floor, D-wing,
IDBI Tower, WTC Complex,
Cuffe Parade,
Mumbai – 400 005 **...Respondent No.2**

3.Sandeep Khaitan
Resolution Professional of
M/s. National Plywood Industries Ltd (NPIL)
Sammati Plaza, 2nd Floor,
G.S.Road, Guwahati – 781 005 **...Respondent No.3**

Present:

For Appellant : Mr. Abhijeet Sinha, Mr. Lzafeer Ahmad BF and Mr. Aditya Shukla, Advocates.

For Respondents : Mr. Jishnu Saha, Sr. Advocate with Mr. Abhijit Sarkar, Advocates for Respondent No. 1.

Mr. Sidhartha Barua and Mr. Praful Jindal, Advocates for Respondent No. 2.

Mr. Anand Verma and Mr. Abhishek Prasad, Advocates for Respondent No. 3.

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The present appeal has been filed by the 'Appellant' – 'PLBB Products Pvt. Ltd' (PLBB) under Section 61 of the 'Insolvency and Bankruptcy Code, 2016' (in short 'Code') against the order dated 10.02.2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal), Guwahati Bench in I.A No. 05 of 2021 in CP(IB)/09/GB/2019.
2. The Adjudicating Authority with a reasoned order has passed the following orders:
    1. *"Considering the arguments from both sides and all the points mentioned in point No.22.1 to 22.20 above, especially the following points, we are of the considered view that the Suspended Management of the CD be given a chance to submit Resolution Plan as prayed for.*

       (a) The issue of limitation is clear only from the orders of the Hon'ble Supreme Court of India and the order of the Hon'ble NCLAT dated 20.01.2020and 24.11.2020 respectively. Hence, the pleadings of the Suspended Management to give him a chance for submitting a Resolution Plan, after the final judgment, being as an MSME Unit is reasonable.

       (b) Major part of the CIRP Proceedings and the approval of the present Resolution Plan had taken place during Covid Pandemic Period.

(c) The CD is an MSME Unit a Corporate Guarantor to the Principal Borrower National Boards Ltd. (NBL). The CD is an Enterprise established on 11.12.1973 functioning fully and the provisions of Section 240 – A of IBC is applicable to the CD, which is reproduced below:

"(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of Section 29-A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises".

(d) Original amount of Loan given to the Principal Borrower was for Rs.3.07 crores only.

(e) 1.05.2000 – The Account became NPA

(f) 3.12.2001 – Corporate Guarantee was invoked for Rs.5,42,94,868.00 as on 31.10.2001.

(g) 30.04.2005 - OTS worked out way back in 2005 for Rs.215.89 lacs, but RS.92.24 lacs was paid and the balance amount was not paid as per OTS arrangement.

(h) The claim has been filed by the FC for Rs.133,54,94,330.00 as on 1.12.2018 in their application filed under Section 7 of IBC against the Corporate Guarantor for the loan disbursed amount of Rs.3,07,71,127.00 by the IDBI to the Principal Borrower NBL.

(i) The CD here is in operation and the claim of Rs.133,54,94,330.00 against the Corporate Guarantor for the loan of Rs.3.07 crores might have pushed the MSME Unit to a

point of NO RETURN / not to make an attempt to repay such a big amount.

2. The prayer made in this IA is accepted to the following extent only-

(1) One chance is given to the Suspended Management of the CD, an MSME Unit as prayed for to submit a concrete composite Feasible and Viable Resolution Plan by 01.03.2021. No other one is allowed to submit any Plan.

(2) The Resolution Professional will place the Resolution Plan immediately, if submitted in time, before the COC for their examination of the proposal in line with the Judgment of the Hon'ble Supreme Court of India on 15.11.2019 in the case of COC of Essar Steel India Ltd. Vs Satish Kumar Gupta & others.

(3) The information relating to the CD etc. made available to the present Resolution Applicant shall be made available to the Suspended Management of the CD for enabling them to submit a Resolution Plan.

(4) The COC is at liberty to negotiate with the existing Resolution Applicant, the Suspended Management and accept the one which is commercially viable, technically feasible based upon the ground realities by a majority with a view to achieving maximisation of value of assets, promotion of entrepreneurship, availability of credit and balancing the interest of all the stakeholders.

(5) The COC is to take decision by 05.03.2021 and the Resolution Professional is to submit the report / plan, if any, before the Registry by 08.03.2021.

23. Hence, this IA is disposed of with the above observations and directions."

The Adjudicating Authority has also raised the issue of how the 'Financial Creditor' claimed 43 times of the amount of loan disbursed 21 years back when the Financial Creditor is under RBI Regulations and capping of interest rate is in operation for several years for MSME unit. The Adjudicating Authority has also raised the issue that guarantee was invoked by the original lenders – IBBI for an amount of Rs.5,42,94,868 as on 31.10.2001. Now the Financial Creditor- SASF is claiming Rs. 133,54,94,330 i.e. 24 times of the claimed amount in the 18 years. The Adjudicating Authority has also raised the issue of OTS.

3. The Appellant – PLBB is the 'Successful Resolution Applicant' whose Resolution Plan has been accepted by 91.84% of the members of the 'Committee of Creditors' (CoC) but the approval for the same is pending before the Adjudicating Authority. The 'Corporate Insolvency Resolution Process' (CIRP) commenced on 08.11.2019. The Appellant has also submitted that Respondent No.1 (MSME-CD) has not submitted EoI of 09.11.2019, thereafter, based on CoC decision 'Form –G' was published on 27.06.2020 where the Respondent No.1 expressed interest but not submitted the Resolution Plan. The Appellant is the sole Resolution Applicant whose Resolution Plan has been approved by the CoC after negotiations. The Respondent No.1 has expressed desire to submit a

Resolution Plan at a belated stage. They have also submitted that the Respondent No.1 is involved in fraudulent and preferential transactions for which IA No. 51/ 2020 is pending before the Adjudicating Authority for disposal and it ought to be disqualified under section 29A of the Code.

4. The Respondent No.1 (Promoter and Erstwhile Director of the Corporate Debtor) having stake in the Corporate Debtor) has challenged the order that **the Appellant was not a party in IA No. 05/2021 filed by the Respondent No.1 herein with the Adjudicating Authority to permit it** to file a Resolution Plan as a 'Promoter' of MSME concerned (NPIL-Corporate debtor). The Respondent No.1 has also submitted that the **Appellant has no *locus standi* to file this appeal. The Respondent no.1 has also raised that the RP of the Corporate Debtor has not provided him a copy of the Resolution Plan submitted by the Appellant to the CoC in accordance with Regulation 21 (III) of the IBBI Regulation** and thereby violated non-compliance of Hon'ble Apex Court judgment in the case of Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. In Civil Appeal No. 8430 of 2018 vide para 13 as enumerated below:

> *"It is also important to note that every participant is entitled to a notice of every meeting of the committee of creditors. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide Regulation 21(3)(iii). Obviously, resolution plans are "matters to be discussed" at such meetings, and the erstwhile Board of Directors are*

"participants" who will discuss these issues. The expression "documents" is a wide expression which would certainly include resolution plans."

He has raised the issue of misleading CoC and Adjudicating Authority on the RP and he has taken post facto approval of the CoC and is facilitating the approval of the Appellant's Resolution Plan. Constitution of CoC has also not in order and even information memorandum has also factored not all the claims. The RP is engaged in private communication with the member of CoC. Certain matters are also being examined by IBBI in respect of certain objection raised by an operational creditor of CD and potential Resolution Applicant viz., 'M/s. ZSVM Plywood Industry Limited'. They have also raised the issue that under the provisions of the Code, if the Corporate Debtor is MSME, it is not necessary for the Promoter to compete with other Resolution Applicant to regain the control of the Corporate Debtor. **The Resolution Professional has also appointed a known professional firm which has done several professional assignments with him before appointing them as the 'forensic auditors' of the CD which** reflects the biasness, conflict of interest, coercion or undue influence on the other side and allegations against the promoter. He has also alleged that the RP has allowed SPV and SPC to submit EoI which was not published in the public domain and only facilitated the Appellant. He has also challenged the constitution of the CoC which is against the mandatory provision provided **in Regulation 21 (III) of the IBBI Regulations and it is liable to be rejected. It has also been stated by the CD that the appellant was incorporated only on**

20.07.2020. In order to enable the appellant the Resolution Professional has allowed SPV and SPC to participate in the process of submitting EOI as a prospective Resolution Applicant to assist the Appellant. He has also stated that the Code has been amended for the promoters of MSME to file Resolution Plan. The intention of the legislature is that the promoters of MSME should be encouraged to pay back the amount with the satisfaction of CoC to regain the control of the CD and entrepreneurship by filing Resolution Plan which is viable, feasible and fulfils the relevant criteria of laid by the Board and Code.

5. The Respondent No.3 – Resolution Professional (RP) has submitted that IA No. 51/2020 in CP(IB) No. 09/GB/2019 is pending for disposal since November, 2020 before the Adjudicating Authority. The RP is awaiting appropriate direction in accordance with the provisions of the Code related to Section 43, 44, 45, 48, 49 & 66 of the Code which has resultant from some transaction audit. However, the IA was heard on 19.01.2021 apart from other dates and the reply has been submitted by the Corporate Debtor (CD) and RP has been asked to submit rejoinder. Hearing has taken place on subsequent dates via video conference, awaiting disposal.
6. We have gone through the submission made by the parties and the relevant records produced before this Appellate Tribunal and after carefully considering all the issues, we are having following observations:
    a. This is the case of the CD which is an MSME Unit, a corporate guarantor to the principal borrower – National Board Limited. The CD was established on 11.12.1973.

b. Original amount of loan given to the principal borrower was Rs.3.07 crore, a claim has been filed by the Financial Creditor for Rs.133 Crore plus.

c. The CD has paid Rs.92.24 lacs on OTS worked out way back in 2005 for Rs.2.16 crore approximately.

d. Section 29-A R/w Section 240-A of the Code refers to the Resolution Applicant in respect of CIRP of any MSME and these two sections provide for certain reliefs to the promoter of the MSME as a prospective Resolution Applicant and is entitled to have opportunity to place Resolution Plan.

e. The Appellant has also cited various judgments as given below but the applicability of the same is under dark as the Adjudicating Authority has only permitted for giving an opportunity to MSME to submit a concreate, composite, feasible and viable resolution plan and no other one is allowed to submit any plan other than the Resolution plan already submitted by the Resolution Applicant;

- *Kalinga Allied Industries India Pvt. Ltd. Vs. Hindustan Coils Ltd (Company Appeal (AT) (Ins) No. 518 of 2020-para 15*
- *Amit Gupta V. Yogesh Gupta in Company Appeal (AT) (Ins) No. 903of 2019*
- *Dwarkadhish Sakhar Karkhana Ltd. Vs. Pankaj Joshi in Company Appeal (AT) (Ins) No. 233 of 2021*
- *Interups Inc. Vs. Kuldeep Kumar Bassi & Ors in Company Appeal (AT) (Ins) No. 1079 of 2020*
- *M/s. Surendra Trading Company Vs. M/s. Juggilal Kamlapat Jute Mills Company Ltd and Ors. (2017) 16 SCc 143*
- *Essar Steel India Ltd. Committee of Creditors Vs. Satish Kumar Gupta (2020) 8 SCc 531- para 127*

- *Manish Kumar Vs. Union of India and Anr. 2021 SCC Online Sc 30- para 69, 177 and 215*

f. Keeping in mind the intention of the legislature, there is no harm in giving an opportunity to the MSME in accordance with the provisions of the Code for keeping the promotion of entrepreneurship alive. The Adjudicating Authority has only provided an opportunity to the MSME and has given the liberty to the CoC to negotiate with existing Resolution Applicant and MSME unit also and accept the one which is commercially viable and technically feasible.

Considering the above observations, we do not find any infirmity in the order and hence, we are dismissing the appeal. However, the Adjudicating Authority is requested to consider IA No.51 of 2020 in CP(IB) No. 09/GB/2019 before finally approving any Resolution Plan.

With these observations, we are disposing of the appeals.

Pending IAs, if any stands disposed of. Interim Orders, if any, passed by this Appellate Tribunal stands vacated. No orders as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member(Technical)

7th September, 2021

New Delhi

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